



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

May 27, 1993

Mr. S. E. Seely
El Paso County Auditor
500 East San Antonio Street, Room 406
El Paso, Texas 79901-2421

Letter Opinion No. 93-43

Re: Whether the County of El Paso may use the county law library fund to maintain statutes and reporters located in the chambers of district and county courts (ID# 19317)

Dear Mr. Seely:

You ask about the proper use of the county law library fund established by the commissioners court of the County of El Paso (the "county"). You explain that the county has established a law library and has vested management of the library in a committee selected by the El Paso County Bar Association. You state that, "[t]he sum set by commissioners court of twenty dollars is taxed, collected and paid as costs in each civil case filed in a county or district court, except suits for delinquent taxes. This fund is kept separate from the general funds of the county as required by law." You explain that the county's seventeen district and county courts each have statutes and reporters that have been purchased by the county and maintained from general funds of the county: "The litigators and the judges regularly use the [materials] that have been provided to each court by the county." We understand you to ask whether the county may use the county law library fund, rather than general funds of the county, to maintain statutes and reporters purchased with general funds of the county and located in the chambers of district and county courts.

County law libraries are governed by subchapter B of chapter 323 of the Local Government Code. Section 323.021 of the Local Government Code authorizes a commissioners court to establish and maintain a county law library. Local Gov't Code § 323.021(a). It also provides as follows:

The commissioners court shall provide *suitable space* for housing the library at a place that is *both convenient and accessible to the judges and litigants* of the county. . . .

Id. § 323.021(b) (emphasis supplied).

Section 323.023 of the Local Government Code authorizes a commissioners court to assess costs, not to exceed \$20.00, in civil cases to fund the county law library. *Id.* § 323.023(a). It further provides that the county law library fund "may be used only for the purpose of establishing the law library after the entry of the order creating it or for the purpose of purchasing or leasing library materials, maintaining the library, or acquiring furniture, shelving, or equipment for the library." *Id.* § 323.023(b). The county law library fund "shall be administered by or under the direction of the commissioners court." *Id.* § 323.023(c). In addition, section 323.024 of the Local Government Code provides that "[t]he commissioners court may vest management of the library in a committee selected by the county bar association. Actions of the committee are subject to approval by the commissioners court." *Id.* § 323.024(b).

In Attorney General Opinion MW-9, this office considered whether article 1702h, V.T.C.S., the predecessor statute to the foregoing subchapter of the Local Government Code, authorized a county commissioners court to use county law library funds to purchase law books for courts. That opinion stated,

We believe that the intention of this statute is to guarantee that when a law library fee is collected, the library needs of both the judges and the litigants will be met. While it may be possible to locate some materials in or near a judge's office, the materials must be accessible to litigants as well. Thus, we do not believe that the law library fund can be used to purchase library materials for the exclusive use of judges.

Attorney General Opinion MW-9 (1979) at 2. In Attorney General Opinion MW-9, this office also considered whether a county could use the county law library fund to purchase books already owned by the county which had been purchased with general funds. The opinion concluded that such a transaction was impermissible because it "would in substance merely transfer funds from the limited-purpose County Law Library Fund to the general fund of the county." *Id.*

We conclude that subchapter B permits a county to use the county law library fund to purchase statutes and reporters to be located in the chambers of district and county courts and thereafter maintain them, provided that the materials are convenient and

readily accessible to litigants as well as judges. *See id.*; *see also* Local Gov't Code §§ 323.021(b), 323.023(b). Subchapter B, however, does not authorize a county to use the county law library fund to maintain materials which are not the property of the county law library. *See* Local Gov't Code § 323.023(b). Using the county law library fund to maintain materials purchased with general funds of the county, like using the county law library fund to purchase such materials from the county, would have the effect of transferring funds from the limited-purpose county law library fund to the general funds of the county. This was concluded to be impermissible in Attorney General Opinion MW-9.¹ Therefore, we conclude that it is not permissible for the county to use the county law library fund to maintain materials located in the chambers of the district and county courts purchased with general funds of the county unless the commissioners court transfers the materials to the county law library collection. *See* Attorney General Opinion MW-9 ("The commissioners court in its reasonable discretion may transfer books currently being used by existing courts to the county law library."); *see also* Local Gov't Code § 323.022 ("The commissioners court may receive any gift or bequest to the law library. Title to a gift or bequest vests in the county").

Finally, we note that under subchapter B, it is for the commissioners court to decide in its discretion whether to use the county law library fund for this purpose. Local Gov't Code §§ 323.023(c) (county law library fund "shall be administered by or under the direction of the commissioners court"), 323.024(b) ("the commissioners court may vest management of the library in a committee selected by the county bar association. Actions of the committee are subject to approval by the commissioners court").

¹Although the reasoning in Attorney General Opinion MW-9 (1979) was based on language in the predecessor statute restricting the use of the county law library fund to county law library purposes, we believe it applies with equal force here because section 323.023(b) of the Local Government Code states that the fund "may be used only for the purpose of establishing the law library . . . or for the purpose of purchasing or leasing library materials, maintaining the library, or acquiring furniture, shelving, or equipment for the library."

S U M M A R Y

Under subchapter B of chapter 323 of the Local Government Code, it is permissible for a county to use the county law library fund to purchase statutes and reporters to be located in the chambers of district and county courts and thereafter maintain them, provided that the materials are convenient and readily accessible to litigants. If the materials were purchased with general funds of the county, the county law library fund cannot be used to maintain them unless the commissioners court transfers the materials to the county law library collection. It is for the commissioners court to decide in its discretion whether to use the county law library fund for this purpose.

Sincerely,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee